Office - Supreme Court, U.S.
FILED
MAR 18 1983
ALEXANDER L. STEVAS
CLERK

NO. 82-5840

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JOSEPH MILLER,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION

NEIL F. HARTIGAN,
Attorney General,
State of Illinois,

MICHAEL B. WEINSTEIN,
Assistant Attorney General,
188 West Randolph Street,
Suite 2200,
Chicago, Illinois 60601,
(312) 793-2570,

Counsel for Respondent.

TERENCE M. MADSEN
Assistant Attorney General.

QUESTION PRESENTED FOR REVIEW

Whether Certiorari should be granted to resolve the conflict between various state courts concerning prosecutors' use of the peremptory challenges.

TABLE OF CONTENTS

PAGE:

QUESTION PRESENTED FOR REVIEW..... i

TABLE OF AUTHORITIES..... iii

OPINION BELOW..... 1

JURISDICTION..... 1

CONSTITUTIONAL PROVISIONS INVOLVED..... 1

STATEMENT OF THE CASE..... 2

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI.

I.

THIS COURT SHOULD REFRAIN FROM DECIDING THIS CONFLICT AMONG THE VARIOUS APPELLATE DISTRICTS IN ILLINOIS WHERE THE VERY QUESTION PRESENTED IN THIS CASE IS NOW PENDING BEFORE THE ILLINOIS SUPREME COURT..... 3

II.

THIS COURT SHOULD NOT EXPEND ITS VALUABLE TIME AND RESOURCES ON THE REVIEW OF THE REASONABLE FACTUAL FINDINGS OF THE TRIAL JUDGE WHERE, REGARDLESS OF THE "TRIGGERING" STANDARD, THE COURT DID LOOK AT THE STATE'S EXERCISE OF ITS PEREMPTORY CHALLENGES AND DID NOT FIND THAT THE STATE WAS EXERCISING THOSE CHALLENGES IMPROPERLY..... 3

CONCLUSION..... 4

TABLE OF AUTHORITIES

PAGE(S):

CASES:

People v. Payne, 106 Ill. App. 3d 1034, 436 N.E.2d 1046 (1st Dist. 1982)..... 3

People v. Teague, 108 Ill. App. 3d 891, 439 N.E.2d 1066 (1st Dist. 1982)..... 3

Swain v. Alabama, 380 U.S. 202 (1965)..... 3

NO. 82-5840

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JOSEPH MILLER,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The Illinois Appellate Court opinion is appended to petitioner's brief.

JURISDICTION

Petitioner appears to have satisfied the prerequisites to jurisdiction established by 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner has quoted the provisions of the United States Constitution applicable to this case. (Petition at 2).

STATEMENT OF THE CASE

Petitioner's statement of the case is a fair and accurate description of the pertinent facts involved in this case. For a more complete statement respondent refers this Court to the Appellate Court opinion appended to the Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

I.

THIS COURT SHOULD REFRAIN FROM DECIDING THIS CONFLICT AMONG THE VARIOUS APPELLATE DISTRICTS IN ILLINOIS WHERE THE VERY QUESTION PRESENTED IN THIS CASE IS NOW PENDING BEFORE THE ILLINOIS SUPREME COURT.

The petitioner asks this Court to grant his petition for writ of certiorari "to resolve the conflict between various state courts" on the question of the use of peremptory challenges to exclude Blacks from jury service. Petition at 3. The petitioner then cites a series of Illinois appellate cases which have adopted varying positions regarding the showing which must be made by a defendant before the State will be required to "explain" its peremptory challenges. See People v. Payne, 106 Ill. App. 3d 1034, 436 N.E.2d 1046 (1st Dist. 1982); contra. People v. Teague, 108 Ill. App. 3d 891, 439 N.E.2d 1066 (1st Dist. 1982). The Illinois Supreme Court has granted the State's Petition for Leave to Appeal in Payne, No. 56907.

This Court should allow the Illinois Supreme Court the first opportunity to resolve this "conflict" among its appellate courts.

II.

THIS COURT SHOULD NOT EXPEND ITS VALUABLE TIME AND RESOURCES ON THE REVIEW OF THE REASONABLE FACTUAL FINDINGS OF THE TRIAL JUDGE WHERE, REGARDLESS OF THE "TRIGGERING" STANDARD, THE COURT DID LOOK AT THE STATE'S EXERCISE OF ITS PEREMPTORY CHALLENGES AND DID NOT FIND THAT THE STATE WAS EXERCISING THOSE CHALLENGES IMPROPERLY.

The petitioner appears to be asking this Court to abandon the "systematic exclusion" test of Swain v. Alabama, 380 U.S. 202 (1965), in favor of 1) abolishing peremptory challenges altogether; 2) establishing a requirement that the State, in essence, explain each peremptory challenge; or, 3)

lessening the showing which must be made to trigger a trial court's inquiry into the State's motives. Petition at 9, 10, 11. Granting the petitioner's request would result in one of the most sweeping alterations in criminal procedure of, at least, this decade. Neither this petitioner, nor certainly justice, would be well-served by taking that broad step in this case.

In this case, the defendant raised the contention that the State was abusing its peremptory challenges before the trial judge and the court did not find that the State had acted improperly. People v. Miller, No. 80-1241 (1st Dist. March 11, 1982) slip. op. at 9. Thus, unless this Court is inclined to abolish peremptory challenges, the petitioner is not going to ultimately benefit from a ruling by this Court, in this case, which would merely define the circumstances sufficient to trigger the inquiry into the State's motives. The trial court, in this case, has already considered whether the State exercised its challenges improperly.

This Court should not expend its valuable time and resources to consider this sweeping question which will not alter the defendant's position.

C O N C L U S I O N

For these reasons, the People of the State of Illinois ask this Court to deny the petition for writ of certiorari.

Respectfully submitted,

NEIL F. HARTIGAN,
Attorney General,
State of Illinois,

MICHAEL B. WEINSTEIN,
Assistant Attorney General,
188 West Randolph Street,
Suite 2200,
Chicago, Illinois 60601,
(312) 793-2570,

Counsel for Respondent.

TERENCE M. MADSEN
Assistant Attorney General.

86743

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

October 5, 1981

Mr. Joseph Miller
Reg. No. A-01855
Box 112
Joliet, IL 60434

No. 86743 - People State of Illinois, respondent, vs. Joseph Miller, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

Very truly yours,

Julieann Hornyak

Clerk of the Supreme Court

App. B

[THIS PAGE INTENTIONALLY LEFT BLANK]